**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.343 OF 1990**
**WITH**
**CROSS OBJECTION**

The State of Maharashtra ) ..Appellant

Versus

Shri Rama Khandu Mhatre )
since deceased through his legal )
heirs: )

1. Smt Nirabai Rama Mhatre )
   (since deceased through her legal )
   heirs)
2. Smt.Anubai Rama Mhatre, )
3. Shri Harishchandra Rama Mhatre )
4. Shri Ramesh Rama Mhatre )..Respondents

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Mrs G.P.Mulekar, A.G.P for the Appellant.

Shri S.M.Kamble for the Respondent Nos.3 to 4.

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**CORAM : ABHAY S. OKA, J.**
**DATE : JANUARY 10, 2007.**

**JUDGMENT:**

1. Heard the learned A.G.P for the Appellant. The Appellant State of Maharashtra has taken exception to the Judgment and Award dated 28th April, 1989 passed by the learned Civil Judge, Senior Division, Raigad at Alibag in a reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act of 1894). The acquisition relates to land at Panvel, Taluka Panvel, District Raigad. The total area of the acquired land is 5760 sq meters. A notification under section 4 of the said Act of 1894

was issued on 03rd February, 1970 and the land was notified for a public purpose of development of satellite city of Navi Mumbai. The Award was made under section 11 of the said Act of 1894 on 24th June, 1986. The Special Land Acquisition Officer offered market value at the rate of Rs.2.78/- per sq meter. The reference Court has fixed the market value at Rs.15/- per sq meter and has awarded statutory benefits.

2. The first submission of the learned A.G.P is that notice under section 12(2) of the said Act of 1894 was served to the Respondent on 25th June, 1986 and therefore, the Application for reference filed by the Respondent was barred by limitation. The second submission is that no evidence was led by the Respondent Claimant of sale instances of comparable lands and therefore, the market value fixed by the Trial Court is on the higher side. Shri Kamble appearing for the Respondent invited my attention to the cross-objection filed by the Respondent. He placed reliance on the decision of the Division Bench of this Court dated 25th and 26th February, 1993 in the case of **Nama Padu Hudar & Others Vs. State of Maharashtra (First Appeal No.754 of 1986 and other connected Appeals)**. He submitted that the present case will be governed by the said decision and the

Respondent is entitled to market value of Rs.25/- per sq meter. The learned A.G.P in reply to the said submission relied upon a decision of Division Bench of this Court in the case of **State of Maharashtra Vs. Ismile Abdul Gafur Patel (2006(2) Maharashtra Law Journal Page 323)** and submitted that the rate fixed by the Division Bench in the case of Nama Hudar (supra) cannot be mechanically applied without considering the issue regarding comparability of the land subject matter of this Appeal and the land which was subject matter of the Appeal before the Division Bench.

3. I have considered the submissions. So far as first submission regarding limitation is concerned, the letter dated 17th October, 1986 submitted by the Special Land Acquisition Officer to the learned District Judge, Raigad alongwith which Application for reference was forwarded itself discloses that notice under section 12(2) of the said Act of 1894 was served to the Respondent on 25th June, 1986 and the reference Application was filed on 23rd July, 1986. Thus, the reference Application was filed on 23rd July, 1986. Thus, the reference Application was filed well within period of six weeks from the date of service of notice assuming that the notice was served on 25th June, 2006. Hence, there is no merit in the first submission.

4. In the case of Nama Padu Hudar (supra), the Division Bench dealt with Appeals arising out of awards made under section 18 of the Land Acquisition Act, 1894 in respect of large tracks of lands situated at Panvel and Kamothe in Taluka Panvel, District Raigad. Perusal of the decision of the Division Bench shows that various factors were considered by the Division Bench such as the location of the lands and the nature of the lands. After consideration of these factors the Division Bench for the purposes of fixing the market value divided the lands into five categories depending upon its distance either from the Mumbai-Pune highway or from gaothan or from Zilla Parishad road. So far as lands which were abutting Mumbai-Pune highway are concerned, the Division Bench fixed the market value of Rs.25/- per sq meter. In case of lands which were at the distance of 800 meters from highway, the Division Bench fixed market value at the rate of Rs.23 per sq meter. The Division Bench referred to various sale instances in the form of Awards made by the reference Courts and decisions of this Courts. Most of the decisions considered by the Division Bench arose out of awards made in respect of lands in Taluka Panvel, District Raigad which were notified under section 4 of the said Act of 1894 on 03rd February, 1970 for the public purpose of

development of satellite city of Navi Mumbai. It will be necessary to refer to paragraph No.26 of the decision of the Division Bench. Paragraph No.26 reads thus:

> "26. It must be mentioned here that the purpose of the acquisition is for development of a township and the valuation of the land is not to be determined merely for purpose of residence or a township thereby signifying the non-agricultural use, but the fact must be borne in mind that this township is a necessary supplement to the industrial growth in and around this area thereby enhancing its value more than an ordinary residential area would fetch. It is necessary that the industries will try to accommodate their officers and workers in its vicinity and thereby it becomes a necessary supplement to the industry itself. Therefore, assessing the market value of these lands has to be in consonance with the industrial growth of whole tract as such. It was urged on behalf of the Government that these pronouncements at Exhibits 'A', 'B', 'C' and 'D' to the civil applications are not comparable for the reason that Exhibit 'A' land is near the

Railway Station Diva Panvel Yard, while the land in Exhibit ‘B’ is close to the railway station. However, he had no grounds to attack the pronouncements which are at Exhibits ‘C’ and ‘D’ which arise out of the present notification of 3.2.1970 from Panvel for purposes of the New Bombay township except for the fact that they are situate near the railway station the valuation arrived at Rs.25/- per sq meter. Assuming that some of the sites are near railway station and some are not, we feel that in the magnitude of the growth of industrial development and the surrounding areas the disadvantage merely on the ground of distance disappears particularly when there are access roads of Zilla Parishad and State highway available to each of these lands. This being the position, nearness or a little distance away from the highway will be of little significance albeit it may make a difference of a rupee or two in the total evaluation. For this purpose with the assistance of learned Counsel of both the parties we had prepared a table showing four groups, the fist one showing the lands abutting the Bombay Pune Highway. The survey numbers

concern with First Appeals Nos.754 of 1986 and 768 of 1986. The second group refers to lands within a distance of 800 meters from the highway but not exactly abutting the highway. These lands are covered by First Appeal No.751 of 1986 (part) and First Appeal No.756 of 1986. The third group is of lands abutting Kamothe Zilla Parishad but within 1200 meters from the Bombay Pune Highway. These lands are covered by First Appeals Nos.753 of 1986, 751 of 1986 (part) and 752 of 1986. The next group is IV-A covered by First Appeal No.755 of 1986 and the lands in this group are within a distance of 800 to 2200 meters from Bombay Pune Highway, while the last group is Group IV-B of lands covered by First Appeal No.743 of 1986, situate within a distance of 200 to 640 metres from Zilla Parishad Road and Gaothan. The lands covered by the decision at Exhibit ‘A’ to the Civil Application No.1596 of 1989 are admittedly at a distance of approximately one kilometre from the National highway as deposed by Shri Wagle and the said valuation arrived at is in respect of the notification issued in 1964. The map tendered by the appellants has been taken on record by

consent of parties. The said map is drawn exactly as the official map which is with the Land Acquisition Officer and the map on record of the Reference Court except for the fact that the map tendered by the appellants shows the locations of lands covered by various judgments. We are however not taking into consideration the lands covered by judgments (e) to (1). However lands covered by the judgments (a) to (d) of the Civil Application are relevant and have been admitted by us for the purposes of this appeal as additional evidence. The location clearly shows that the lands covered by Exhbit 'A' are at a distance of approximately one kilometre from the national highway, while Exhibit 'B' lands are somewhat closer to the national highway, but both these lands are in respect of the older notifications. In so far as lands covered by Exhibits 'C' and 'D' are concerned, they are almost at a distance of 1 kilometre from the national highway and are the lands covered by the present notification of 1970 for purpose of new township. The valuation arrived at is Rs.25 per sq meter for lands at Exhibits 'C' and 'D'. In so far as the present suit lands

are concerned, they are identical, similar and comparable to the lands covered by the judgments at Exhibits ‘A’ to ‘D’ as well as to the two lands of Jenson and Nicolson and Esso Petrol Pump. However, as has been laid down time and again that market value assessment will always depend on broad common sense, general topography, prospective use and the facilities available to a particular tract of land. It is therefore likely to be based more or less on rough inferences drawn from various factors. We have also the assistance of various pronouncements of a contemporaneous period, one of which pronouncement is of this Court at Exhibit ‘C’ and the one pronouncement is of the Reference Court at Exhibit ‘D’, in respect of the lands from the same village, for the same purpose and under the same notification. These serve as guide-lines and lead us to the conclusion that these four groups of lands will have to be valued in the best interest of parties as follows:-

. Lands in Group I covered by First Appeals Nos.754 of 1986 and 763 of 1986 at the rate of Rs.25 per sq metre, those in

Group II covered by First Appeal Nos.751 of 1986 (part) and 756 of 1986 at the rate of Rs.23 per sq meter, those covered by First Appeals Nos.753 of 1986, 751 of 1986 (part and 752 of 1986 in Group III at the rate of Rs.22 per sq meter, those covered by First Appeal No.755 of 1986 in Group IV-A at the rate of Rs.20 per sq meter as also those covered by First Appeal No.743 of 1986 lying in Group IV-B at the rate of Rs.20 per sq meter. The chart in respect of these groups is annexed to the judgments and forms part of this judgment".

The tabular form dividing the acquired land into five groups is part of the Judgment of the Division Bench which reads thus:

| **Group No.** | **First Appeal No.** | **S.No.** | **H.No.** | **Area Sq. Mt.** | **Rate granted psm Rs. Ps.** |
|---|---|---|---|---|---|
| **I.** | | | | | |
| Abutting the Highway | 754/1986 | 671 | 1(part) | 8240 | 25.00 |
| | 763/1986 | 694 | 2 | 5870 | 25.00 |
| | | 698 | 2 | 510 | 25.00 |
| | | 704 | 7 | 1060 | 25.00 |
| | | 704 | 2 | 3310 | 25.00 |

| | | | | | |
|---|---|---|---|---|---|
| **II.** | | | | | |
| Within 800 meters | 751/1986 (part) | 598 | 2/5 | 4270 | 23.00 |
| | | 665 | 1B | 2450 | 23.00 |
| | | 665 | 1D | 1800 | |
| | 756/1986 | 663 | 1/5 | 1340 | 23.00 |
| | | 660 | 3 | 5830 | 23.00 |
| **III.** | | | | | |
| Abutting Kamothe Z.P.Road to 1200 meters | 753/1986 | 614 | 2 | 3100 | 22.00 |
| | 751/1986 (part) | 617 | 2 | 4350 | 22.00 |
| | 752/1986 | 548 | 7(part) | 2500 | 22.00 |
| **IV.** | | | | | |
| 800 Mtrs to 200 Mtrs from Bombay-Pune Highway | 755/1986 | 209 | 9 | 4560 | 20.00 |
| | | 213 | 10 | 1900 | 20.00 |
| **IV-B.** | | | | | |
| 200 Mtrs. from Z.P.Road and Gaothan to 640 Mtrs from Z.P.Rd. & Gaothan" | 743/1986 | 240 | 2 | 1900 | 20.00 |
| | | 274 | 2 | 4760 | 20.00 |

5. It will be necessary to refer to the evidence on record in the present case. A son of the Respondent was examined as a witness. In paragraph No.2 he has stated thus:

> "Compensation awarded is grossly inadequate. Bombay-Pune National Highway is situated near the lands under reference. H.O.C Colony, M.I.D.C Quarters, Jawahar Co-operative Industrial Estate, and factory of Jhonson Nicholson are situated near the lands under reference. Level of the lands is at par of the level of the road. There is no necessity of filling. The lands are situated within the Panvel Municipal limits. The lands are enjoying N.A potentiality as the lands are situated within municipal areas".

In the cross-examination he admitted that the acquired lands were paddy lands. The Respondent examined Shri Jeevan Kulkarni as an expert valuer. He proved his valuation report in his evidence. The said valuation report at Exhibit 30 discloses that the distance of the acquired land form Mumbai-Pune highway is 800 meters. There is no challenge in his

cross-examination to this aspect stated in the report. For dealing with the submission made by the learned A.G.P on the basis of decision of the Division Bench of this Court in the case of Ismile Abdul Gafur Patel (supra), it must be noted that the Division Bench has not dealt with the decision in the case of Nama Padu Hudar (supra) and the Division Bench was dealing with another decision of the Division Bench dated 16th March, 2000 in First Appeal No.795 of 1985. It will be necessary to refer to a subsequent decision of the Apex Court dated 06th March, 2006 in the case of **Shantadevi Ruparel Vs. Special Land Acquisition Officer & Anr. (Civil Application No.1557 of 2006)**. In the said decision, the Apex Court has referred to the decision of Division Bench of this Court in the case of Nama Hudar (supra). The Division Bench has extensively referred to the said decision by referring to five categories fixed under the said decision. The Apex Court noted the submission made before it that as the lands subject matter of the Appeal before the Apex Court were from the same village, the rates which are fixed by the Division Bench in case of Nama Padu Hudar (supra) should be awarded to the land subject matter of the Appeal before the Apex Court. The Apex Court noted that the decision in the case of Nama Padu Hudar (supra) was challenged by the Authority and Special Leave Petition was dismissed. The Apex Court

thereafter proceeded to pass the following order:

> ". Having regard to the wording of Sec.25 and 28A after the 1984 Amendment we are of the view that the Appellant is entitled for the same rate as had been granted by the same High Court in a decision of a coordinate bench in the case of Nama Padu Hudar Vs. State of Maharashtra through the Special Land Acquisition Officer in First Appeal No.754 of 1988 judgment dated 25th and 26th February, 1993. It is not in dispute that the said decision was challenged by the Respondent-Authority but the special leave petition was dismissed by this Court. The appeals are disposed of by directing the respondent-Authority to grant the appropriate compensation on the basis of the decision of the High Court in Hudar's case to the appellant".

6. Thus, the Apex Court approved the decision in the case of Nama Hudar (supra) and directed that compensation in respect of lands which were subject matter of the Appeal before it should be paid in accordance with the rates fixed in the said decision. Thus, Apex Court expressly approved the course adopted

by the Division Bench of dividing the lands into five categories depending upon the distance of the said lands from the Mumbai-Pune National Highway or from Zilla Parishad Road or from gaothan. In view of the said decision of the Apex Court, the submission made by the learned A.G.P cannot be accepted.

7. Considering the evidence on record and considering what is held by the Apex Court in the case of Shantadevi Ruparel (supra), the rate of market value in the present case will be governed by the case of Nama Padu Hudar (supra). The category II which deals with lands within a distance of 800 meters from the highway will apply to the present case for which market value of Rs.23/- per sq meter has been fixed by the Division Bench.

8. As the Award under section 11 has been made on 24th June, 1986, there cannot be any dispute as regards grant of statutory benefits. Hence, Appeal preferred by the State must fail and cross-objection must be allowed in part.

9. Hence, I pass the following order:

(i) First Appeal No.343 of 1990 is dismissed.

(ii) The Appellant will pay costs of the Appeal to the Respondents.

(iii) Cross-objection filed by the Respondents is partly allowed. The impugned Judgment and Award is modified and it is directed that the Respondents will be entitled to market value of the acquired land at the rate of Rs.23/- per sq meter. In addition to the market value, the Respondents will be entitled to statutory benefits under section 23(1-A), section 23(2) and section 28 of the Land Acquisition Act, 1894.

(iv) The Respondents will be entitled to proportionate costs of the reference as well as cross-objection.

(v) The reference Court will calculate the compensation payable to the Respondents on the basis of this Judgment. The said exercise shall be done within a period of four months from the date of receipt of the writ of this Judgment.

(vi) Writ to be sent immediately.

**JUDGE**